



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM

HONOURABLE MR. JUSTICE R.SUBBIAH

AND

HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1164 of 2016

The Manager,
Royal Sundaram Alliance General Insurance,
Sundaram Towers,
46, Whites Road,
Royapettah, Chennai - 600 014. ..Appellant/2nd Respondent

Vs.

1. Nagarani (Died)
W/o. Thirugnana Sampathkumar
2. Thirugnana Sampathkumar
S/o. A.Perumal ...Respondents 1 & 2/Petitioners
3. Sivagami
W/o. Subramani ...3rd Respondent/1st Respondent
4. Rathinakumar
S/o. Ponnusamy ...4th Respondent/3rd Respondent
5. M/s. IFFCO Tokio General Insurance Co. Ltd.,
Represented by its Manager,
Tulsi Chambers, Third Floor,
T.V.Samy Road (West), R.S.Puram,
Coimbatore. ...5th Respondent/4th Respondent
6. Praveen
S/o. Thirugnana Sampathkumar
(RR6 brought on record of the LR of the
deceased R1 Viz., Nagarani vide order
dated 08.02.2021 made in CMP.615 of 2021
in CMA.1164 of 2016) ...6th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.02.2016 in M.C.O.P.No.96 of 2010 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.



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For Appellant : ::Mr.K.Vinoth for
Mr.Elveera Ravindran

For Respondents : ::R1 - Died
Mr.A.Gowthaman for R2
No Appearance for R3 & R4
Mrs. Saraswathi
for R.Krishnamoorthy for R5

JUDGMENT

(Judgment of the Court was delivered by SATHI KUMAR SUKUMARA KURUP, J.)

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 08.02.2016 made in M.C.O.P.No.96 of 2010 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2. Aggrieved by the award passed by the Motor Accident Claims Tribunal, Vellore, the appellant/Insurance Company filed this appeal seeking to set aside the award passed by the Tribunal.

3. The case in brief is as follows:

On 28.03.2010 at about 7.15 pm, while the deceased was travelling as a pillion rider in motor cycle bearing Registration No. TN-33-AK-9945 at Avinashi to Kovai near Karumathampatti Police Quarters, the driver of the third respondent's Innova Car bearing Reg. No.TN-39-AM-0637 drove the same in a rash and negligent manner, dashed against the deceased, as a result of which, he sustained grievous injuries and multiple fractures all over the body. Immediately, he was taken to KMCH Hospital, Coimbatore. In spite of treatment, he died.

4. Mr.Elveera Ravindran, learned counsel for the appellant/Insurance Company submitted his arguments. As per his submissions, the Motor Accident Claims Tribunal failed to appreciate the facts as to whose negligence resulted in the death of the victim. The claimants are parents before the Tribunal. There is evidence available that the two wheeler hit against the car. But, FIR was registered against the driver of the Car bearing Registration No. TN-39-AM-0637. Further investigation revealed that the two wheeler bearing Registration No. TN-33-AK-9945 came in a rash and negligent manner and collided with the car bearing Registration No. TN-39-AM-0637. Therefore, even though the FIR was registered against the driver of the car, as investigation proceeded further, action was dropped and final report to that effect was sent to the Court of the learned Judicial Magistrate. Further, damage was caused on



the right side of the Car which was proceeding from East to West at the place of occurrence whereas, the two wheeler came from North to South and hit against the body of the car. Motor Vehicle Inspector's report mentioned about the damage on the left side of the two wheeler and the damage caused on the right side of the Car and there was no damage or dent found on the front side of the Car. The impact was on the centre of the East to West road as per the rough sketch prepared by the Investigating Officer and as per the evidence of P.W.2. The counsel for the Insurance Company/R5 also elicited those facts from the driver of the car, who was examined as R.W.2. The Tribunal failed to appreciate the said facts and had fixed the liability on the part of the driver of the car and made the Insurance Company liable to pay the compensation. During the enquiry, a document was marked as appointment letter. The deceased was a B.Tech final year student and an appointment letter was issued based on which salary of the deceased was fixed by the Tribunal as Rs.3,00,000/- per year and based on that the compensation was awarded for loss of love and affection Rs.1,00,000/-. Therefore, the appellant Insurance Company has come by way of appeal seeking to set aside the award. No liability was fixed on the deceased as he was a pillion rider on the two wheeler and he was not wearing the helmet at the time of accident. Therefore, contributory negligence has to be fixed and the amount has to be deducted from the compensation amount arrived at before this Court.

5. Mr.R.Krishnamoorthy, learned counsel appearing for the Insurance Company/R5 has submitted his arguments. As per his submissions, the liability has to be fixed on the two wheeler. Therefore, the deceased also has to be made liable and his share of the award amount could be deducted.

6. The learned counsel for the respondents 1 and 2/claimants submitted that the appointment letter was issued by the Company in which the deceased was selected as a candidate in the company, based on the campus interview. The deceased was a brilliant student and without any arrears, he had completed the third year. Candidates who do not have any arrears and who have good academic record are only selected in campus interviews. The deceased was offered Rs.3,01,500/- as annual income and the same was marked. The learned counsel for the appellant Insurance Company did not question the same. Therefore, the same has to be accepted.

7. Point for consideration

Whether the first and second respondents/claimants are entitled to enhancement of the award amount.



8. Perused the petition and counter in MCOP.No.96 2010 and the impugned award passed by the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore and the grounds of appeal filed by the claimants seeking enhancement.

9. Considering that the quantum of compensation awarded by the Tribunal is high and excessive, as stated by the learned counsel for the appellant, it is reconsidered as follows.

10. The Tribunal had fixed Rs.3,01,500/- as annual income, the income fixed by the company in the appointment letter was Rs.3,01,500/- per year. On the date of death, the deceased was aged 21 years. Therefore, towards future prospects 40% of the income could be added. Loss of Income is arrived at as follows:

Annual Income	=	Rs.3,01,500/-
Future Prospects (40%)	=	Rs.1,20,600/- =4,22,100/-
Income Tax upto Rs.1,60,000	-	Nil
Rs.1,60,000 to Rs.3,00,000	-	10%
Rs.3,00,000 to Rs.5,00,000	-	20%

Less Income Tax Payable	=	3,00,000-1,60,000
	=	1,40,000x10%=14,000
	=	4,22,100-3,00,000
	=	1,22,100x20%=24,420
	=	14000+24420=38420

Annual income for computation = 4,22,100-38,420 = 3,83,680

Taking the multiplier as 18 for the age group upto 25 years	
Pecuniary Loss	:: Rs.383680 x18x1/2
	:: Rs.34,53,120/-

11. The amounts awarded by the Tribunal under the heads like "loss of love and affection" and "loss of estate" are excessive. Therefore, this Court fixes Rs.40,000/- each towards "loss of love and affection" and "loss of estate" respectively.

12. Since the amounts awarded by the Tribunal under all the other heads are just and fair, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Income	38,70,000	34,53,120
2	Loss of Love and Affection	1,00,000	40,000



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Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
4	Loss of Estate	50,000	40,000
5	For Funeral Expenses	25,000	25,000
6	For Transportation	10,000	10,000
7	For Damages to Cloths and Articles	2000	2,000
	Total	40,57,000	35,70,120

13. As the deceased did not wear a helmet, he had succumbed the injuries. Therefore, 10% contributory negligence is fixed on the deceased/pillion rider.

$$\text{Rs.} 35,70,120 \times 10\% = 3,57,012$$

Therefore, this Court awards compensation of a sum of Rs.32,13,108/- (3570120-357012).

14. The Point for consideration is answered in favour of the appellant/Insurance Company against the respondents/Claimants.

15. In the result, this Civil Miscellaneous Petition is partly allowed. The appellant/Insurance Company is directed to deposit the amount, which we have determined in this appeal, to the credit of M.C.O.P.No.96 of 2010, on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore, with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit along with costs if any as awarded by the Tribunal, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant shall be entitled to withdraw a sum of Rs.16,13,108/- with accrued interest and the second claimant shall be entitled to withdraw a sum of Rs.16,00,000/- with accrued interest. The appellants are directed to pay appropriate Court fees within a period of two months, failing which, they are not entitled to claim interest on the award amount. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



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To

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1.The Motor Accident Claims Tribunal,
I Additional District and Sessions Court,
Vellore.

Copy to:
The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.10424

C.M.A.No.1164 of 2016

PVS (CO)
CB(28/09/2021)